

**Introduced by Senator Schiff**

February 25, 1999

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An act to amend Section 1484 of, and to add Sections 1193.5 and 1473.5 to, the Penal Code, relating to habeas corpus.

LEGISLATIVE COUNSEL'S DIGEST

SB 786, as introduced, Schiff. Habeas corpus.

Existing law provides that every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of the imprisonment or restraint. Application for the writ is made by petition verified by the oath or affirmation of the petitioner.

This bill would, among other things, provide that contentions raised and rejected on direct appeal shall not be cognizable on petition for a writ of habeas corpus, specify that a writ shall not issue upon any ground not raised upon direct appeal, with specified exceptions, specify that a writ shall not issue upon any ground omitted from a prior petition, with specified exceptions, specify the time to file a petition for a writ, and provide that a court may waive these limitations if it finds by a preponderance of the evidence that a miscarriage of justice would otherwise result. A court would be authorized, but not required, to order discovery for habeas purposes upon a showing of good cause, but not prior to the filing of the petition nor after the termination of the habeas proceeding.

The bill would require the trial judge, at the time judgment is pronounced in any case in which the defendant will be

imprisoned for a felony, to instruct the defendant of the deadlines imposed by this bill and to explain that these deadlines are distinct from the deadlines imposed for filing a writ of habeas corpus in federal court.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1193.5 is added to the Penal  
2 Code, to read:

3 1193.5. At the time judgment is pronounced in any  
4 case in which the defendant will be imprisoned pursuant  
5 to a judgment of a felony conviction, the judge shall  
6 instruct the defendant of the deadlines applicable to a  
7 writ of habeas corpus imposed by Section 1473.5 and shall  
8 explain that these deadlines are distinct from the time  
9 limitations for filing a writ of habeas corpus in a federal  
10 court to challenge a judgment of a criminal conviction.

11 SEC. 2. Section 1473.5 is added to the Penal Code, to  
12 read:

13 1473.5. (a) This section shall apply whenever a  
14 petition for a writ of habeas corpus challenges the legality  
15 of imprisonment pursuant to a judgment of a felony  
16 conviction that is entered by a superior court of this state.

17 (b) If an appeal from the conviction is pending or has  
18 been decided, the petition may be filed in the court that  
19 has or had jurisdiction of the appeal. If the court appoints  
20 a referee, the court may appoint the trial judge to act as  
21 the referee if appropriate.

22 When a decision of the court of appeal denying relief  
23 is reviewable by the California Supreme Court under  
24 Section 1506, the petitioner may apply for review rather  
25 than file an original petition for a writ in the California  
26 Supreme Court. If the court having jurisdiction of the  
27 appeal has ruled on a habeas petition in the matter, denial  
28 of another petition by the same court or any other court  
29 or judge shall be deemed to be on the grounds that any  
30 successive claims have previously been litigated and any



1 new claims shall be barred procedurally, unless the order  
2 denying the petition states otherwise.

3 (c) Contentions that were raised by appellant and  
4 rejected by the court on appeal shall not be cognizable on  
5 habeas corpus unless the contention is based on a change  
6 in the law after the decision on appeal became final that  
7 applies under subdivision (i).

8 (d) A writ of habeas corpus shall not be issued on any  
9 ground not raised in the appeal unless one of the  
10 following conditions is true:

11 (1) The facts were not part of the appellate record and  
12 could not have been made part of the appellate record  
13 with reasonable diligence.

14 (2) The contention is based on a change in the law  
15 after the decision on appeal became final that applies  
16 under subdivision (i).

17 (e) A writ of habeas corpus shall not be issued on any  
18 ground omitted from a prior petition unless one of the  
19 following is true:

20 (1) The facts were unknown to either the petitioner or  
21 the petitioner's attorney at the time of the appeal and  
22 could not, with reasonable diligence, have been known to  
23 either at that time.

24 (2) The claim is based on material facts or evidence  
25 favorable to the defendant that an agent of the state  
26 concealed or failed to turn over to the defendant in  
27 violation of law in effect at the time.

28 (3) The claim is based on a change in the law after the  
29 prior petition was filed that applies under subdivision (i).

30 (f) If a timely petition is denied and no other review  
31 is available, a petition may be filed in the next higher  
32 court within 30 days of denial. A timely petition that is  
33 denied because the petitioner failed to state with  
34 particularity the facts upon which the petitioner seeks to  
35 have the judgment of conviction overturned shall be  
36 cured only by the filing of a new petition within the same  
37 court within 30 days.

38 (g) (1) Except as provided by this subdivision or  
39 subdivision (h), an untimely petition shall be dismissed.

1 A petition is untimely if it meets any of the following  
2 conditions:

3 (A) It is filed more than two years after the decision on  
4 the direct appeal becomes final by denial or conclusion of  
5 review by the California Supreme Court.

6 (B) It is filed more than two years after the time for  
7 seeking appellate review has expired.

8 (C) If no appeal is taken, it is filed after more than two  
9 years after the entry of judgment.

10 (2) The California Supreme Court may promulgate  
11 different time standards for habeas corpus petitions in  
12 capital cases.

13 (3) The court in which a petition is filed shall not  
14 extend the time for filing a petition except as necessary  
15 under any of the following circumstances:

16 (A) The petitioner was prevented from filing by  
17 unlawful state action.

18 (B) The right asserted was newly recognized by the  
19 United States Supreme Court or the California Supreme  
20 Court and made retroactively applicable to cases on  
21 collateral review.

22 (C) The facts upon which the claim was based were  
23 not known to the petitioner and could not have been  
24 discovered with reasonable diligence.

25 (D) A timely petition raising the same claim was  
26 pending in a lower court.

27 (4) A petition filed after the expiration of the time  
28 limits provided by this section or the standards  
29 promulgated by the California Supreme Court shall be  
30 deemed to have been denied on the grounds of  
31 untimeliness unless the order denying the petition states  
32 otherwise.

33 (h) The court shall waive the limitations of subdivision  
34 (c), (d), (e), (f), or (g) if it finds by a preponderance of  
35 the evidence that a miscarriage of justice would  
36 otherwise exist. As used in this subdivision, “miscarriage  
37 of justice” means any of the following:

38 (1) An error that resulted in a trial so fundamentally  
39 unfair that, absent the error, no reasonable finder of fact  
40 would have convicted the petitioner.



(2) The petitioner is factually innocent of the crime for which he or she was convicted or a special circumstance or enhancement allegation upon which the sentence was based is false.

(3) The death penalty was imposed by a sentencing body that had such a grossly misleading profile of the petitioner that, absent the trial error or omission, no reasonable finder of fact would have imposed a sentence of death.

(4) The petitioner was sentenced or convicted under an invalid statute.

(5) Any other factor comparable to the factors specified in this subdivision that are set forth in rules adopted by the Supreme Court.

(i) The legality of the petitioner's trial or sentence shall be determined without regard to any change in law subsequent to final judgment unless the change in law does any of the following:

(1) It makes the conduct for which the petitioner was convicted not a crime.

(2) It places the punishment beyond the authority of the sentencing authority to impose.

(3) It changes a rule of criminal procedure essential to the fundamental fairness and accuracy of the proceedings.

(4) It makes the crime for which the petitioner was convicted a lesser offense.

(5) The change of law was made retroactively applicable by the United States Supreme Court or the California Supreme Court.

SEC. 3. Section 1484 of the Penal Code is amended to read:

1484. ~~The~~ (a) *On the return of the writ, the party brought before the Court or Judge, on the return of the writ, court or judge may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof of the return, or allege any fact to show either that his or her imprisonment or detention is unlawful, or that he or she is entitled to his or her discharge. The Court or Judge must thereupon proceed*

1 ~~in a summary way to hear such proof as court or judge~~  
2 ~~shall then proceed summarily to hear proof that may be~~  
3 ~~produced against such or in favor of that imprisonment~~  
4 ~~or detention, or in favor of the same, and to dispose of such~~  
5 ~~the party as the justice of the case may require, and. The~~  
6 ~~court or judge shall~~ have full power and authority to  
7 require and compel the attendance of witnesses, by  
8 process of subpoena and attachment, and to do and  
9 perform all other acts and things necessary to a full and  
10 fair hearing and determination of the case.

11 (b) *The court or judge may, but is not required to,*  
12 *order discovery upon a showing of good cause. No court*  
13 *or judge shall have jurisdiction to order discovery*  
14 *extending past the termination of a habeas corpus*  
15 *proceeding.*

16 (c) *Nothing in this section shall be construed to*  
17 *abridge the obligation of the prosecution to disclose*  
18 *material exculpatory evidence as required by the*  
19 *California Constitution or United States Constitution.*

20 SEC. 4. Except as otherwise expressly provided, the  
21 provisions of this act shall apply only to cases in which  
22 judgment is entered on or after January 1, 2000.

